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HATCHER *v.* RICHMOND & C. B. RY. CO.

March 11, 1909.

[63 S. E. 999.]

1. Boundaries (§ 33*)—Conflicting Elements—Presumptions.—

Courses and distances given in a description must yield to fixed monuments where there is a conflict in the description, but, in the absence of evidence, the presumption is that no conflict exists.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 146, 147; Dec. Dig. § 33.* 2 Va.-W. Va. Enc. Dig. 582, et seq.]

2. Boundaries (§ 8*)—Description—Party Wall.—

Where the owners of adjoining tenements divided by a party wall claimed under deeds calling for a straight line between their buildings and lots which extended back to an alley, the center line of the party wall, extended to the alley, constituted the true dividing line.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. § 74; Dec. Dig. § 8.* 2 Va.-W. Va. Enc. Dig. 590; 10 Id. 899.]

3. Boundaries (§ 41*)—Instructions.—

Where plaintiff testified that one of the legs of the trestle of defendant's railroad was four inches under the walls of his tenement, the true dividing line between the lots owned by plaintiff and defendant being the center line of the party wall between the tenements thereon when the parties acquired title, the jury ought to have been instructed that plaintiff was entitled to recover if defendant's structures extended beyond the dividing line and upon plaintiff's premises, and it was error to charge that defendant had a right to erect its structures any where within the lines called for by its deed.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 205-207; Dec. Dig. § 41.* 7 Va.-W. Va. Enc. Dig. 723, et seq., 744; 10 Id. 899.]

PHILLIPS *v.* SOUTHERN RY. CO.

March 11, 1909.

[63 S. E. 998.]

1. Railroads (§ 480*)—Fires—Burden of Proof.—One suing for a destruction of property by fire alleged to have been set by sparks from a locomotive has the burden of proving that the fire originated from sparks.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1713; Dec. Dig. § 480.* 6 Va.-W. Va. Enc. Dig. 133, 134.]

2. Railroads (§ 480*)—Fires—Burden of Proof.—Where a fire originated from sparks from a locomotive, the railroad company must,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.